

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 11-N-18958-DFM
)	
JOHN RALPH MAYNARD,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 55169,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

Respondent John Ralph Maynard (Respondent) was charged with willfully violating California Rules of Court, rule 9.20, by willfully disobeying or violating a court order requiring compliance with rule 9.20. He failed to participate either in person or through counsel, and his default was entered. The Office of the Chief Trial Counsel (State Bar) filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the State Bar.¹

Rule 5.85 provides the procedure to follow when an attorney fails to participate in a disciplinary proceeding after receiving adequate notice and opportunity. The rule provides that if an attorney's default is entered for failing to respond to the notice of disciplinary charges (NDC), and the attorney fails to have the default set aside or vacated within 180 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.²

¹ Unless otherwise indicated, all references to rules are to this source.

² If the court determines that any due process requirements are not satisfied, including adequate notice to the attorney, it must deny the petition for disbarment and take other appropriate action to ensure that the matter is promptly resolved. (Rule 5.85(E)(2).)

In the instant case, the court concludes that the requirements of rule 5.85 have been satisfied, and therefore, grants the petition and recommends that Respondent be disbarred from the practice of law.

FINDINGS AND CONCLUSIONS

Respondent was admitted to practice law in this state on March 1, 1973, and has been a member since then.

Procedural Requirements Have Been Satisfied

On February 2, 2012, the State Bar filed and properly served the NDC on Respondent by certified mail, return receipt requested, at his membership records address. The NDC notified Respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) The NDC was returned to the State Bar by the United States Postal Service bearing the stamp “Not delivered as addressed; unable to forward.”

Respondent had actual notice of this disciplinary proceeding. On March 22, 2012, Deputy Trial Counsel Ross E. Viselman (DTC Viselman) called one of the telephone numbers located on a public records search and made telephone contact with Respondent. DTC Viselman spoke to Respondent and told him that a NDC had been filed and that an answer was due. DTC Viselman also explained the substance of the charge contained in the NDC. During this telephone conversation, DTC Viselman also obtained Respondent’s email address so that he could forward a copy of the NDC to Respondent. On March 22, 2012, DTC Viselman sent an email to Respondent attaching the NDC and a court order, which, among others things, set the trial dates in this matter. In the email, DTC Viselman stated, “Please note that you are currently in default and an answer is due. I would expect you to file an answer by April 2, say, to avoid a motion for default. Also, you should update your membership address.”

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Respondent, however, failed to file a response to the NDC. On April 3, 2012, the State Bar filed and properly served upon Respondent a motion for entry of Respondent's default. The motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence by the State Bar deputy trial counsel declaring the additional steps taken to provide notice to Respondent. (Rule 5.80.) The motion also notified Respondent that if he did not timely move to set aside his default, the court would recommend his disbarment.

Respondent did not file a response to the motion, and Respondent's default was entered on April 26, 2012. The order entering the default was served on Respondent at his membership records address by certified mail, return receipt requested, and by first-class mail, postage prepaid, to an alternate address. The court also ordered Respondent's involuntary inactive enrollment as a member of the State Bar under Business and Professions Code section 6007, subdivision (e), effective three days after service of the order, and he has remained inactively enrolled since that time.

Respondent also did not seek to have his default set aside or vacated. (Rule 5.83(C)(1) [attorney has 180 days to file motion to set aside default].) On November 14, 2012, the State Bar filed and properly served the petition for disbarment on Respondent by certified mail, return receipt requested, to his membership records address. As required by rule 5.85(A), the State Bar reported in the petition that: (1) there has been no contact with Respondent since his default was entered; (2) there are no other disciplinary matters pending against Respondent; (3) Respondent has a prior record of discipline; and (4) the Client Security Fund has not made payments resulting from Respondent's misconduct. Respondent did not respond to the petition for disbarment or move to set aside or vacate the default. The case was submitted for decision on December 13, 2012.

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Respondent has been disciplined on one prior occasion.³ Pursuant to a Supreme Court order filed on July 22, 2011, Respondent was suspended for one year, the execution of which was stayed, and he was placed on probation for two years subject to certain conditions including that he be suspended for the first 90 days of probation. This was a reciprocal discipline matter based upon Respondent's misconduct in Wisconsin and his discipline by the Supreme Court of Wisconsin.⁴ Respondent stipulated in this matter that he committed acts of moral turpitude, dishonesty and corruption by his misleading use of his former firm's name on invoices and envelopes, by retaining funds sent to him by clients whom he misled into believing that they were paying Respondent's former firm, and by his failure to notify the firm that he had collected and retain \$7,773.84 in firm funds.

The Admitted Factual Allegations Warrant the Imposition of Discipline

Upon entry of Respondent's default, the factual allegations in the NDC are deemed admitted and no further proof is required to establish the truth of such facts. (Rule 5.82.) As set forth below in greater detail, the factual allegations in the NDC support the conclusion that Respondent is culpable as charged and, therefore, violated a statute, rule or court order that would warrant the imposition of discipline. (Rule 5.85(E)(1)(d).)

Case Number 11-N-18958 (Rule 9.20 Matter)

Respondent willfully violated California Rules of Court, rule 9.20 (duties of disbarred, resigned or suspended attorneys), by not filing a declaration of compliance with rule 9.20 in conformity with the requirements of rule 9.20(c), thereby failing to timely comply with the

³ The court admits into evidence the certified copy of Respondent's prior record of discipline that is attached as exhibit 1 to the State Bar's November 14, 2012 petition for disbarment after default.

⁴ Respondent was admitted to practice law in Wisconsin on August 28, 1970.

provisions of a Supreme Court order requiring compliance with California Rules of Court, rule 9.20.

Disbarment is Appropriate under the Rules of Procedure

Based on the above, the court concludes that the requirements of rule 5.85(E) have been satisfied, and Respondent's disbarment is recommended. In particular:

- (1) the NDC was properly served on Respondent under rule 5.25;
- (2) Respondent had actual notice of the proceedings prior to the entry of his default, as DTC Viselman and Respondent spoke by telephone. DTC Viselman told Respondent that a NDC had been filed and that an answer was due. DTC Viselman also explained the substance of the charge contained in the NDC;
- (3) the default was properly entered under rule 5.80; and
- (4) the factual allegations in the NDC deemed admitted by the entry of the default support a finding that Respondent violated a statute, rule or court order that would warrant the imposition of discipline.

Despite actual notice and opportunity, Respondent failed to participate in this disciplinary proceeding. As set forth in the Rules of Procedure of the State Bar, the court recommends his disbarment.

RECOMMENDATION

Disbarment

The court recommends that Respondent John Ralph Maynard be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

California Rules of Court, Rule 9.20

The court also recommends that respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and

(c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding.

Costs

The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, such costs being enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that John Ralph Maynard, State Bar number 55169, be involuntarily enrolled as an inactive member of the State Bar of California, effective three calendar days after the service of this decision and order. (Rule 5.111(D).)

Dated: February ____, 2013

DONALD F. MILES
Judge of the State Bar Court